

In the Matter of Merchant Mariner's Document No. Z-647940-D2 and all other Seaman Documents

Issued to: JESSE JAMES MALRY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1188

JESSE JAMES MALRY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 11 August 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a waiter on board the United States SS PRESIDENT JEFFERSON under authority of the document above described, on or about 2 August 1959, Appellant assaulted and battered the ship's second cook with a knife.

At the hearing, Appellant was not represented by counsel. He entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the second cook and another member of the crew named Flores who stopped the fight between Appellant and the second cook.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he was attacked by the second cook; Appellant does not know what he did, but he acted in self-defense.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of six months outright plus six months on twelve months' probation.

FINDINGS OF FACT

On 2 August 1959, Appellant was serving as a waiter on the United States SS PRESIDENT JEFFERSON and acting under authority of his Merchant Mariner's Document No. Z-647940-D2 while the ship was in the port of Savannah, Georgia.

On the night of this date, Appellant and the second cook returned on board after having been with two female companions. The cook followed Appellant toward his room while they argued as

to whether they should have given more money to the females. The argument evolved into a fist fight and wrestling match. The cook was the larger of the two. As they struggled, Appellant opened a penknife and stabbed the cook in three places before Flores arrived on the scene and stopped the fight.

The cook's wounds were treated at a local hospital and both seamen were jailed. Appellant was fined \$55 and the cook \$35 for disturbing the peace.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the decision is contrary to the law and the evidence which shows that the cook was the original aggressor. Appellant used only such force in self-defense as was reasonably necessary to defend himself from serious bodily injury. The cook was following Appellant toward his room; Appellant was the smaller of the two men; he was in poor health due to recent surgery; and after the fight was stopped, the cook injured Appellant with an ax.

APPEARANCE ON APPEAL: Fagan and Levine of Los Angeles, California, by Jack Levine, Esquire, of Counsel.

OPINION

I agree with the Examiner's statement that the use of a knife by Appellant exceeded the bounds of self-defense because there is no evidence in the record that Appellant was in danger of serious bodily injury. Hence, Appellant was guilty of assault and battery regardless of the size of the knife and whether or not the cook was the original aggressor.

The evidence indicates that the cook was primarily responsible for the start of the fight and that he was a larger man than Appellant. Nevertheless, this did not justify the use of a dangerous weapon to repel the attack in the absence of clear evidence that Appellant was in grave danger. Appellant testified that he had recently undergone surgery but presumably he was found fit for sea duty before the commencement of the voyage, and there is no evidence that he suffered other than minor injuries during the fight. On the other hand, the cook's injuries were treated at a hospital ashore. Appellant testified that the cook was taken off the ship on a stretcher.

The events which occurred after Flores stopped the fight in question are not relevant to this proceeding. Hence, any subsequent assault and battery upon Appellant by the cook with an ax is not material to the action taken in this appeal.

ORDER

The order of the Examiner dated at New York, New York, on 11 August 1959, is
AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 22nd day of August, 1960.